

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

IN RE: NATIONAL FOOTBALL
LEAGUE PLAYERS' CONCUSSION
INJURY LITIGATION

No. 2:12-md-02323-AB
MDL No. 2323

THIS DOCUMENT RELATES TO:
ALL ACTIONS

**MEMORANDUM IN SUPPORT OF PARENTS CONCUSSION COALITION'S
MOTION FOR LEAVE TO FILE AS AMICUS CURIAE WITH RESPECT TO
APPROVAL OF CLASS ACTION SETTLEMENT**

Introduction

A. The PCC's Concussion Advocacy

The PCC advocates on behalf of parents and their children for better concussion education, prevention and management policies in youth athletics. The organization was founded by three mothers, each of whom had a son who suffered lingering effects from concussions, whether obtained on a school playground, or through an organized team sport. Galvanized by this shared-experience, they established the PCC to advocate for the importance of early concussion education for athletes and parents, and to promote the adoption by school districts and athletic programs of important protocols and standards, including:

- Effective coach, athlete and parent education;
- Effective parents/athlete informed consent prior to athletic participation;
- Effective reporting of concussive injuries to parents/guardians within 24 hours of injury;
- Implementing return-to-learn ("RTL") policies to help transition student-athletes recovering from concussive injuries back to the classroom and continued academic success;
- Improving remove-from-play and return-to-play guidelines;
- Establishing protocols to reduce the incidents of concussive and sub-concussive incidents in all sports; and
- Promoting "concussion forward" policies in school districts with the aim of achieving comprehensive concussion care, management, and prevention.

A fundamental premise of the PCC's education efforts is that effective change can only come through changing the culture with respect to concussions. Underreporting of concussions remains a serious problem among children and teens who are not only more likely than adults to get concussions, but who take longer to recover from them in comparison to adults. In fact, of growing concern to parents and children alike is research which shows structural and functional brain alterations resulting from repeated sub-concussive blows (*i.e.*, where no concussion symptoms are reported), such as the case where a soccer player frequently heads a ball, a hockey player repeatedly hits the boards, or a football player's helmet makes contact with the field or with other players. Identifying concussion symptoms and reporting them to parents and children, and teaching (and rewarding) athletes for self-reporting their concussions, as well as concussion signs in fellow athletes, are important steps in helping to change the culture surrounding concussions.

Another important element in the PCC's education efforts is a focus on implementing RTL policies, particularly those which provide support for cognitive recovery from concussions or other brain injuries. School athletics represent important co-curricular activities, but student-athletes, at the elementary, middle-school and high school level, are students first. Concussive brain injuries negatively impact students' academic performances, long-term academic prospects, and even career prospects. As a result, ensuring that students affected by a concussion make a successful transition back to the classroom is an important goal of RTL. As a recent report in the journal of the American Academy of Pediatrics noted:

With an estimated 1.7 million traumatic brain injuries occurring annually, many of them concussions, the need for specific recommendations for returning a student to learning after concussion is necessary. Given that students typically appear well physically after a concussion, it may be difficult for educators, school administrators, and peers of the student to fully understand the extent of deficits experienced by a student with a concussion. This lack of outward physical appearance of illness may also make it difficult for school officials to accept the need for adjustments for a student with a concussion. Cognitive difficulties

following a concussion have long been recognized and can clearly affect a student's learning capabilities.¹

The PCC is leading efforts to encourage school districts to implement reasonable RTL protocols so that student athletes can recover quickly in the classroom, as well as physically, from a concussion.

The culmination of the PCC's concussion education campaign was an update to Connecticut's 2010 concussion law. Beginning in 2012, the PCC led an effort to pass new legislation regarding concussion safety and education in Connecticut. With the PCC's support, in May 2014 the Connecticut House and Senate unanimously passed new concussion legislation, Public Act 14-66, which was signed into law by Connecticut Governor Dannel P. Malloy. Connecticut's new concussion law, geared towards high-school athletes, addresses many of the issues enumerated above, and brings the state in line with many other jurisdictions which have sought to safeguard student athletes by enacting more effective concussion legislation. In his statements about Connecticut's concussion law, Governor Malloy remarked that "this is a complex piece of legislation, going far further than simply warning people of concussions. There are real requirements in this legislation about education plans, about gathering information, about reporting and making sure that everyone is aware as they can be."²

Having successfully lobbied to enact more rigorous protections for high-school athletes, the PCC continues to advocate for better education and concussion guidelines throughout all youth sports, including at the elementary and middle school levels, and in recreational and intermural leagues.

¹ Mark E. Halstead, et al., *Returning to Learning Following a Concussion*, Pediatrics, Oct. 27., 2013, at <http://pediatrics.aappublications.org/content/early/2013/10/23/peds.2013-2867>

² Michael Fornabaio, *New law designed to educate about concussions*, CTPost.com, Sept. 29, 2014, at <http://www.ctpost.com/highschool/article/New-law-designed-to-educate-about-concussions-5789350.php>.

B. The PCC's Interest in These Proceedings

The PCC appears in this proceeding as a representative of every parent whose child has suffered a concussive brain injury. The PCC has a special interest in this proceeding because the NFL, as the most popular professional sport in North America³, has an obligation not only to its players, but to the public, to honestly and candidly disclose material information related to concussive brain injury and repeated brain trauma. The actions the NFL takes to address these concerns have a real “trickle-down” effect on school districts, parents, coaches and athletes who all look to the NFL for guidance on concussions. The NFL is uniquely positioned to investigate, assess, and gather data on such injuries. Thus, whether the NFL has been transparent and forthright in educating its players, and the public, about the effects of MTBI, is of paramount importance. Whether the NFL knew or should have known that such injuries can cause significant impairment in cognitive functioning, memory, mood and behavior, and to what extent did the NFL know that certain neurodegenerative diseases, such as ALS, Parkinson's Disease, Alzheimer's, dementia and CTE, were directly linked to MTBI, are all important issues which will not be adequately addressed, if at all, by an early settlement of the instant class action. Other objectors⁴ have raised similar concerns regarding the NFL's candidness – and perhaps intentional fraud – in failing to disclose the link between MTBI and brain damage, or worse, actively working to conceal such a link. The PCC join those objectors in arguing that this Court should reject the class action settlement, so that the factual record can be better developed and the NFL's conduct thoroughly investigated through meaningful fact discovery.

³ As the New York Times recently reported, “The sole non-NFL event on the 2013 list of the Top-10 most watched television programs was the Academy Awards broadcast, at No. 7, between two postseason playoff games. The Oscars had 40 million viewers, the Super Bowl 108 million. N.F.L. revenue last year was about \$9 billion, but the stated goal of its commissioner, Roger Goodell, in 2010 was to increase that to \$25 billion by 2027.” Grant Cornett, *Down By Law*, N.Y. Times Magazine, Nov. 9, 2014, at 45.

⁴ See, e.g., Objection of Sean Morey, Alan Faneca, Ben Hamilton, Robert Royal, Roderick “Rock” Cartwright, Jeff Rohrer, and Sean Considine to Class Action Settlement, Docket No. 6201, dated October 6, 2014.

C. The Class Settlement Neither Serves the Public's Interest, Nor the Interest of Stakeholders Affected by Concussion

This case raises important public health issues that not only affect the NFL and its players, but which also impact all children who participate in youth athletics. The risk of concussive, sub-concussive and other brain injuries are not unique to the NFL. Concussion impacts millions of children, of all ages and abilities. As the American Academy of Pediatrics observed, “given the large number of concussions occurring each year, both in and out of formal sport activities, most schools will encounter a child who is dealing with symptoms from a concussion.”⁵ Those directly impacted by concussions also require special care and treatment. Such treatment, as well as research into the long-term health effects of brain injuries and associated neurodegenerative diseases, will almost certainly affect public health costs. Of course, as many parents of children who have suffered concussions know, the effects of brain injuries and cognitive degenerative diseases extend to family members who are at the front line in providing care and support for their ailing loved ones.

In light of the foregoing, it is important to provide a forum where such public health concerns can be addressed and the NFL's actions towards its players properly investigated. A settlement so early in this stage of litigation – indeed, before the parties even have an opportunity to take discovery – does not further the interests of those stakeholders who care deeply about ensuring that NFL players (past, present and future), and indeed all athletes affected by concussion and other brain injuries, have an adequate opportunity to vindicate their rights and receive sufficient compensation for their injuries. The PCC's participation in this case as *amicus curiae* will not only provide a representative voice for key stakeholders, but will provide a unique perspective which has thus far been absent in these proceedings.

⁵ Mark E. Halstead, et al., *Returning to Learning Following a Concussion*, Pediatrics, Oct. 27., 2013, at <http://pediatrics.aappublications.org/content/early/2013/10/23/peds.2013-2867>

Conclusion

For the foregoing reasons, PCC respectfully requests that this Court grant PCC's motion for leave to file memorandum as amicus curiae with respect to approval of class action settlement.

Dated: November 17, 2014.

Respectfully Submitted,

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